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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/704,595	11/02/2000	Antonius H.M. Akkermans	PHN 17,721	2515

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PHILIPS INTELLECTUAL PROPERTY & STANDARDS
P.O. BOX 3001
BRIARCLIFF MANOR, NY 10510

EXAMINER

ORTIZ CRIADO, JORGE L

ART UNIT	PAPER NUMBER
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2656

DATE MAILED: 12/29/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

09/704,595

Applicant(s)

AKKERMAN, ANTONIUS H.M.

Examiner

Jorge L. Ortiz-Criado

Art Unit

2656

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 11/01/2005 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☒ The Notice of Appeal was filed on 12/14/2005. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☒ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: _____.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____.
13. ☐ Other: _____.

Continuation of 11. does NOT place the application in condition for allowance because:

Response to Arguments

Applicant argues that the objection to the specification provides SUPPORT for the subject matter terminology.

The Examiner draws the attention to the Applicant to the MPEP objection being made, where the specification is objected to as FAILING TO PROVIDE PROPER ANTECEDENT BASIS FOR THE CLAIMED SUBJECT MATTER. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o), rather than questioning support for the subject matter.

608.01(O) [R-3] BASIS FOR CLAIM TERMINOLOGY IN DESCRIPTION

The meaning of every term used in any of the claims should be apparent from the descriptive portion of the specification with CLEAR DISCLOSURE AS TO ITS IMPORT; and in mechanical cases, it should be identified in the descriptive portion of the specification by reference to the drawing, designating the part or parts therein to which the term applies. A term used in the claims may be given a special meaning in the description. **>See MPEP § 2111.01 and § 2173.05(a).<USUALLY THE TERMINOLOGY OF THE ORIGINAL CLAIMS FOLLOWS THE NOMENCLATURE OF THE SPECIFICATION, BUT SOMETIMES IN AMENDING THE CLAIMS OR IN ADDING NEW CLAIMS, NEW TERMS ARE INTRODUCED THAT DO NOT APPEAR IN THE SPECIFICATION. THE USE OF A CONFUSING VARIETY OF TERMS FOR THE SAME THING SHOULD NOT BE PERMITTED. New claims and AMENDMENTS TO THE CLAIMS ALREADY IN THE APPLICATION SHOULD BE SCRUTINIZED NOT ONLY FOR NEW MATTER BUT ALSO FOR NEW TERMINOLOGY. While an applicant is not limited to the nomenclature used in the application as filed, he or she should make appropriate amendment of the specification whenever this nomenclature is departed from by amendment of the claims so as to have clear support or ANTECEDENT BASIS IN THE SPECIFICATION FOR THE NEW TERMS APPEARING IN THE CLAIMS. This is necessary in order to INSURE CERTAINTY IN CONSTRUING THE CLAIMS IN THE LIGHT OF THE SPECIFICATION, Ex parte Kotler, 1901 C.D. 62, 95 O.G. 2684 (Comm'r Pat. 1901). See 37 CFR 1.75, MPEP § 608.01(i) and § 1302.01. Note that examiners should ensure that the terms and phrases used in claims presented late in prosecution of the application (including claims amended via an examiner's amendment) find clear support or ANTECEDENT BASIS in the description so that the meaning of the terms in the claims may be ascertainable by reference to the description, see 37 CFR 1.75(d)(1). For these reasons as in MPEP § 608.01(o) the examiner cannot find proper ANTECEDENCE BASIS for the CLAIM TERMINOLOGY.

Applicant argues that the combination is improper and in that the modification of Nakano is improper.

The Examiner cannot concur with Applicants assertions because in response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See In re Fine, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and In re Jones, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992).

In this case, Gérard et al. discloses that the measurement signal is sampled when said intensity is comparatively high during scanning operation and within a predetermined time intervals in order to suppress crosstalk. Nakano teaches and suggest an apparatus for employing an optical information carrier, which discloses a signal generation system operatively coupled to a read system, said signal generation system adapted to produce a sample signal to control sampling of a measurement signal. Nakano teaches and suggest to causes the measurement signal to be sampled at least every predetermined time period, in order to make the optical disk apparatus perform a stable scanning operation (See abstract, detailed description [0004-[0016])

It would have been obvious to one with an ordinary skill in the art at the time of the invention to modify Gérard et al. as outlined above to sample the measurement signal, as well established and well known, every predetermined period of time, in order to control avoid instabilities, such as vibrations of the focus actuator during such scanning, as taught and clearly suggested by Nakano.

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12/26/05